

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

JOHN W. KEISER,  
by his Guardian Ad Litem,  
LAURIE KEISER,

Plaintiff,

v.

HARTFORD UNDERWRITERS INSURANCE  
COMPANY,

Defendant.

CIVIL ACTION NO. 06-584

**ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANTS HARTFORD  
UNDERWRITERS INSURANCE COMPANY**

**COUNT I**

Defendant, Hartford Underwriters Insurance Company (“Hartford”), by and through its attorneys, for its answer and affirmative defenses, avers as follows:

1. Lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 1 of the Complaint, and therefore denies the averments and demands strict proof thereof at trial.

2. Lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 2 of the Complaint, and therefore denies the averments and demands strict proof thereof at trial, except denies the averments contained in paragraph 2 of the Complaint to the extent that they state conclusions of law.

3. Admits that Hartford is duly authorized to transact insurance business in the State of Delaware and has designated the Insurance Commissioner of the State of Delaware as its agent for service of process. Denies all averments relating to “defendant National Insurance Company”, and further denies the averments contained in paragraph 3 of the

Complaint relating to service of process and denial of corporate existence or proper identity as conclusions of law to which no response is required.

4-5. With respect to the averments contained in paragraphs 4 and 5 of the Complaint, Hartford respectfully refers the Court to the insurance policy for the contents thereof.

6. Admits that the accident in which plaintiff was allegedly injured was reported to Hartford and has been assigned Claim No. YCH AL 38734, but lacks knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in paragraph 6 of the Complaint, and therefore denies those averments and demands strict proof thereof at trial.

7. Denies the averments contained in paragraph 7 of the Complaint, except, to the extent that plaintiff purports in paragraph 7 of the Complaint to describe the provisions of the insurance policy, Hartford respectfully refers the Court to the policy for the contents thereof.

8. Admits that plaintiff has submitted medical bills to Hartford, but deny all remaining averments contained in paragraph 8 of the Complaint.

9-10. Denies the averments contained in paragraph 9 and 10 of the Complaint.

11. Admits that Hartford has determined that it does not owe plaintiff any obligations under the insurance policy, and denies all remaining averments contained in paragraph 11 of the Complaint.

12-13. Denies the averments contained in paragraph 12 and 13 of the Complaint.

WHEREFORE, defendant respectfully requests that judgment be entered in its favor and against plaintiff, together with such other relief, including attorneys' fees and costs, as the Court deems just and proper.

**COUNT II**

14. Repeats and restates its responses to paragraphs 1 through 13 of the Complaint as though fully set forth.

15.-17. Denies the averments contained in paragraphs 15 through 17 of the Complaint.

WHEREFORE, defendant respectfully requests that judgment be entered in its favor and against plaintiff, together with such other relief, including attorneys' fees and costs, as the Court deems just and proper.

**FIRST AFFIRMATIVE DEFENSE**

The Complaint fails to state a cause of action upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff's claims for damages should be barred or reduced to the extent that he has failed to mitigate his damages.

**THIRD AFFIRMATIVE DEFENSE**

Plaintiff's claims for relief are barred by the doctrine of estoppel.

Dated: September 28, 2006

Respectfully submitted,

/s/ William M. Kelleher

William M. Kelleher (I.D. No. 3961)  
BALLARD SPAHR ANDREWS & INGERSOLL, LLP  
919 N. Market Street, 12<sup>th</sup> Floor  
Wilmington, DE 19801-3034  
Telephone: (302) 242-4465

Attorney for Defendant,  
Hartford Underwriters Insurance Company

OF COUNSEL:  
BALLARD SPAHR  
ANDREWS & INGERSOLL, LLP  
John C. Grugan  
Diana L. Spagnuolo  
1735 Market Street, 51st Floor  
Philadelphia, Pennsylvania 19103-7599  
Telephone: (215) 665.8500

**CERTIFICATE OF SERVICE**

I, William M. Kelleher, hereby certify that on this 28th day of September, 2006, I caused a true and correct copy of the attached Answer and Affirmative Defenses, to be served on the following:

**Via Electronic Filing and First Class Mail**

Jeffrey J. Clark, Esq.  
SCHMITTINGER & RODRIGUEZ, P.A.  
414 South State Street, P.O. Box 497  
Dover, DE 19903

/s/ William M. Kelleher  
William M. Kelleher (I.D. No. 3961)  
BALLARD SPAHR ANDREWS & INGERSOLL, LLP  
919 N. Market Street, 12<sup>th</sup> Floor  
Wilmington, DE 19801-3034  
Telephone: (302) 242-4465